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22 UNITED STATES BANKRUPTCY COURT

23 NORTHERN DISTRICT OF CALIFORNIA

24 SAN FRANCISCO DIVISION

25 In re ) Case Nos. 19-30088 DM (Lead Case)  
26 ) 19-30089 DM  
27 PG&E CORPORATION )  
-and- ) Chapter 11  
28 PACIFIC GAS AND ELECTRIC ) Jointly Administered  
COMPANY, \_\_\_\_\_)

1	Debtors.	)	
2	<input type="checkbox"/> Affects PG&E Corporation	)	<b>NOTICE OF APPEAL AND STATEMENT</b>
3	<input type="checkbox"/> Affects Pacific Gas and Electric Company	)	<b>OF ELECTION TO HAVE APPEAL HEARD</b>
4	<input checked="" type="checkbox"/> Affects both Debtors.	)	<b>BY UNITED STATES DISTRICT COURT</b>
5	* All papers shall be filed in the Lead Case	)	<b>FOR THE NORTHERN DISTRICT OF</b>
6	No. 19-30088 DM	)	<b>CALIFORNIA</b>
7		)	<b>[Related to Dkt. Nos. 11999, 12000, 12001,</b>
8		)	<b>12054, 12207]</b>
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NOTICE IS HEREBY GIVEN that City Of Santa Clara, dba Silicon Valley Power, and Northern California Power Agency hereby both appeal, pursuant to 28 U.S.C. § 158(a)(1), from the *Order Regarding Dispute Between Debtors and California Department of Water Resources* [Dkt. No. 12207], entered on April 22, 2022, a copy of which is attached hereto as Exhibit A (the “Final Order”), and each of the following interlocutory orders and decisions (collectively with the Final Order, the “Orders”):

- *Memorandum Decision Regarding Dispute Between Debtors and the California Department of Water Resources* [Dkt. No. 11999], entered on March 8, 2022, a copy of which is attached hereto as **Exhibit B**;
- *Order Granting California Department Of Water Resources' Motion For Order Determining That The Castle Rock Agreement With PG&E Cannot Be Assumed And Claim No. 78104 Be Paid* [Dkt. No. 12000], entered on March 8, 2022, a copy of which is attached hereto as **Exhibit C**;

- *Order Denying Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources* [Dkt. No. 12001], entered on March 8, 2022, a copy of which is attached hereto as Exhibit D; and
- *Order Denying Motion to Intervene by City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency* [Dkt. No. 12054], entered on March 22, 2022, a copy of which is attached hereto as Exhibit E.

City Of Santa Clara, dba Silicon Valley Power, and Northern California Power Agency are creditors and parties in interest. 11 U.S.C. §§ 101(10), 1009.

Pursuant to 28 U.S.C. § 158(c)(1), City Of Santa Clara, dba Silicon Valley Power, and Northern California Power Agency elect to have the appeal heard by the United States District Court for the Northern District of California rather than by the Bankruptcy Appellate Panel for the Ninth Circuit.

The names of the parties to the Orders and Memorandum Decision and the name, address, and telephone number of their respective attorneys, are:

**APPELLANT**

Party	Counsel
<b>Appellants</b>	Thomas G. Mouzes (SBN 99446) Robert D. Swanson (SBN 162816) Michael E. Chase (SBN 214506) BOUTIN JONES INC. 555 Capitol Mall, Suite 1500 Sacramento, CA 95814 Telephone: (916) 321-4444 Email: <a href="mailto:tmouzes@boutinjones.com">tmouzes@boutinjones.com</a> <a href="mailto:rswanson@boutinjones.com">rswanson@boutinjones.com</a> <a href="mailto:mchase@boutinjones.com">mchase@boutinjones.com</a>
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5 **APPELLEE**

6 Party	Counsel
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14	<p>PAUL J. PASCUZZI, SBN 148810            NICHOLAS L. KOHLMAYER, SBN 299087            FELDERSTEIN FITZGERALD            WILLOUGHBY PASCUZZI &amp; RIOS LLP            500 Capitol Mall, Suite 2250            Sacramento, CA 95814            Telephone: (916) 329-7400            Fax: (916) 329-7435            Email: <a href="mailto:ppascuzzi@ffwplaw.com">ppascuzzi@ffwplaw.com</a>  <a href="mailto:nkohlmeyer@ffwplaw.com">nkohlmeyer@ffwplaw.com</a></p>

20 **OTHER PARTIES TO THE ORDERS AND MEMORANDUM DECISION**

21 Party	Counsel
23 <b>Other Interested Parties</b>	<p>Richard W. Slack (<i>pro hac vice</i>)            Theodore E. Tsekerides (<i>pro hac vice</i>)            Jessica Liou (<i>pro hac vice</i>)            Matthew Goren (<i>pro hac vice</i>)            WEIL, GOTSHAL &amp; MANGES LLP            767 Fifth Avenue            New York, NY 10153-0119            Telephone: (212) 310-8000            Fax: (212) 310-8007            Email: <a href="mailto:Richard.slack@weil.com">Richard.slack@weil.com</a>  <a href="mailto:Theodore.tsekerides@weil.com">Theodore.tsekerides@weil.com</a></p>
28	

<p>of Reorganization Dated June 19, 2020, the “Reorganized Debtors”)</p>	<p><u><a href="mailto:Jessica.liou@weil.com">Jessica.liou@weil.com</a></u> <u><a href="mailto:Matthew.goren@weil.com">Matthew.goren@weil.com</a></u></p> <p>Jane Kim David A. Taylor Thomas B. Rupp KELLER BENVENUTTI KIM LLP 650 California Street, Suite 1900 San Francisco, CA 94108 Telephone: (415) 496-6723 Fax: (415) 636-9251 Email: <u><a href="mailto:jkim@kbkllp.com">jkim@kbkllp.com</a></u> <u><a href="mailto:dtaylor@kbkllp.com">dtaylor@kbkllp.com</a></u> <u><a href="mailto:trupp@kbkllp.com">trupp@kbkllp.com</a></u></p>
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DATED: May 5, 2022.

## BOUTIN JONES INC.

By: /s/ Thomas G. Mouzes  
Thomas G. Mouzes  
Robert D. Swanson  
Michael E. Chase

-and-

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**NORTHERN CALIFORNIA POWER AGENCY**

1                   **EXHIBIT A**  
2                   **(Final Order)**  
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Entered on Docket

April 22, 2022

EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: April 22, 2022

DENNIS MONTALI  
U.S. Bankruptcy Judge

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22 Attorneys for California Department of Water  
23 Resources, by and through the State Water Project

14 UNITED STATES BANKRUPTCY COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

17 In re:

18 PG&amp;E CORPORATION

19 - and -

20 PACIFIC GAS AND ELECTRIC  
21 COMPANY,

22 Reorganized Debtors.

23 Bankruptcy Case  
24 No. 19-30088 (DM)

25 Chapter 11

26 (Lead Case)

27 (Jointly Administered)

**28 ORDER REGARDING DISPUTE  
BETWEEN DEBTORS AND CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

29 Date: April 13, 2022

30 Time: 10:00 a.m.

31 Ctrm: 17

32 Judge: Dennis Montali

33

34  Affects PG&E Corporation

35  Affects Pacific Gas and

36 Electric Company

37  Affects both Debtors

1        Before the Court is the California Department of Water Resources' Motion for Order  
2 Determining that The Castle Rock Agreement with PG&E Cannot be Assumed and that The  
3 Department of Water Resources' Claim No. 78104 be Paid (the "DWR Motion")<sup>1</sup> (Dkt. No. 11887)  
4 and the Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and  
5 Compelling Arbitration of Claim of California Department of Water Resources (the "Debtors'  
6 Motion") (Dkt. No. 11896) in the above captioned chapter 11 cases; and this Court having issued  
7 its Memorandum Decision Regarding Dispute Between Debtors and the California Department of  
8 Water Resources (Dkt. No. 11999) granting the DWR Motion and denying the Debtors' Motion by  
9 orders at Docket Nos. 12000 and 12001, respectively, and setting a further briefing schedule; and  
10 the Court having considered and denied the Notice of Appearance and Ex Parte Application for  
11 Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power  
12 Agency to Intervene and File a Response to California Department of Water Resources' Motion  
13 for Order Determining that The Castle Rock Agreement with PG&E Cannot be Assumed and that  
14 The Department of Water Resources' Claim No. 78104 be Paid (Dkt. 12024 and 12054); and the  
15 Court having considered the further briefing by the Debtors (Dkt. No. 12076) and DWR (Dkt. Nos.  
16 12129 and 12129-1); and the Court having issued its Tentative Ruling Re Dispute Between Debtors  
17 and the California Department of Water Resources ("Tentative Ruling") (Dkt. No. 12147); and the  
18 Court having held hearings on March 2, 2022, and April 13, 2022, to consider the arguments and  
19 objections of the parties; and this Court, for the reasons stated by this Court on the record at the  
20 hearings, having determined that the ruling in the Court's Tentative Ruling should become the final  
21 ruling, and after due deliberation and sufficient good cause appearing therefor,

22                    IT IS HEREBY ORDERED THAT:

23                    1.        The issue of DWR's liability for removal costs under the Castle Rock Agreement  
24 was properly before the Court based on the DWR Motion, the Debtors' Motion and the other  
25 pleadings and argument made to the Court in these proceedings;

26                    2.        There are no material facts in dispute;

27  
28                    <sup>1</sup> Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such  
terms in the DWR Motion.

1           3. DWR's interpretation of the applicable sections of the Castle Rock Agreement is  
2 correct;

3           4. DWR does not owe any estimated future removal costs or anything else to Debtors  
4 and the remaining cotenants (City of Santa Clara dba Silicon Valley Power and Northern California  
5 Power Agency) under the Castle Rock Agreement; and

6           5. There are no damages to be assessed, by this Court or by arbitration, under that  
7 agreement.

8           IT IS HEREBY FURTHER ORDERED that, except as to the rulings made herein, the Court  
9 is not making any ruling as to any dispute between DWR on the one hand, and the City of Santa  
10 Clara dba Silicon Vailey Power and Northern California Power Agency on the other, under the  
11 Transmission Services Agreement between those parties, which issues shall be dealt with outside  
12 this Court.

13           IT IS HEREBY FURTHER ORDERED that the Court retains jurisdiction to hear and  
14 determine all matters arising from or related to the implementation, interpretation, or enforcement  
15 of this Order. This Order shall be immediately effective and enforceable upon its entry.

16 **APPROVED AS TO FORM**

17 **KELLER BENVENUTTI KIM LLP**

18   
19 Jane Kim, Attorneys for Debtors  
and Reorganized Debtors

20           **\*\*END OF ORDER\*\***

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**EXHIBIT B**

**(Memorandum Decision dated March 8, 2022)**



Signed and Filed: March 8, 2022

Henry Montalb

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**DENNIS MONTALI**  
**U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

MEMORANDUM DECISION REGARDING DISPUTE BETWEEN DEBTORS AND THE  
CALIFORNIA DEPARTMENT OF WATER RESOURCES

On March 2, 2022, the court heard oral argument regarding California Department of Water Resources' Motion for Order Determining that The Castle Rock Agreement with PG&E Cannot be Assumed and that The Department of Water Resources' Claim No. 78104 be Paid (the "DWR Motion") (Dkt. 11887) and the Motion of

- 1 -

1 the Reorganized Debtors for Entry of an Order Modifying Plan  
2 Injunction and Compelling Arbitration of Claim of California  
3 Department of Water Resources (the "Debtors' Motion") (Dkt.  
4 11896), together with the accompanying memoranda, declarations  
5 and other filings.

6 Having considered the matters fully, the court concludes  
7 that the DWR Motion should be GRANTED and the Debtors' Motion  
8 should be DENIED.

9 Long before these bankruptcy cases were filed, the dispute  
10 between these opposing parties was identified and framed, and  
11 either side could have initiated the arbitration procedures of  
12 the 1984 Cotenancy Agreement ("Agreement"). Neither did. Even  
13 after the petitions were filed on January 29, 2019, that  
14 procedure was available, either by DWR, perhaps after first  
15 seeking relief from stay, or by Debtors. Again, neither pursued  
16 that procedure.

17 All that changed when the Debtors' Plan of Reorganization  
18 (the "Plan") was negotiated, filed, considered and confirmed.  
19 As pointed out by DWR, specific provisions were inserted into  
20 the Plan and the Order Confirming the Plan (the "OCP") to deal  
21 with and reserve for later resolution very numerous open issues  
22 relating to executory contracts between Debtors and many  
23 governmental agencies, including DWR.

24 Among the most relevant of them are:

25 34. Determination of Cure Disputes.

26 a. Pursuant to Section 8.2(c) of the Plan, **in the event**  
27 **of an unresolved dispute regarding** (i) any Cure Amount,  
28 (ii) the ability of the Reorganized Debtors or any  
assignee to provide "adequate assurance of future  
performance" (within the meaning of section 365 of the

1 Bankruptcy Code) under the executory contract or  
2 unexpired lease to be assumed, or **(iii) any other matter**  
3 **pertaining to assumption, assumption and assignment, or**  
4 **the Cure Amounts required by section 365(b)(1) of the**  
5 **Bankruptcy Code (each, a "Cure Dispute"), such Cure**  
6 **Dispute shall be resolved by a Final Order of the Court,**  
7 which may be entered after the Effective Date. (emphasis  
8 added).  
9

10 67. Governmental Performance Obligations.

11 d. Notwithstanding anything in this Confirmation Order,  
12 the Plan, or the Plan Documents, the listing of a matter  
13 as an "executory contract" or an "unexpired lease" in  
14 the Debtors' schedules or Plan Documents (a "Potentially  
15 Assumed Contract/Lease") is without prejudice to any  
16 contention by any Governmental Unit that the matter is  
17 not in fact an executory contract or unexpired lease as  
18 set forth in section 365 of the Bankruptcy Code. With  
19 respect to any Cure Amount for a Potentially Assumed  
20 Contract/Lease for which the United States or any  
department, agency, or instrumentality of the State of  
California (collectively, the "Governmental Parties") is  
listed as the Non-Debtor Counterparty, all parties  
reserve all rights to dispute such Cure Amount. **If any**  
**Governmental Party disputes (i) that any Potentially**  
**Assumed Contract/Lease is in fact an executory contract**  
**or unexpired lease or (ii) any Cure Amount, such**  
Governmental Party shall have no later than ninety (90)  
days after the Confirmation Date (or such later date as  
may be mutually agreed upon between the applicable  
Governmental Party and the Debtors or Reorganized  
Debtors) to file and serve an objection setting forth  
such dispute, and **any such dispute shall be resolved by**  
**the Bankruptcy Court.** (Emphasis added).

21 DWR is adamant that after it gave its notice of termination  
22 of its participation in the Agreement on June 30, 2018,  
23 effective one year later, there was nothing left for it to do or  
24 for Debtors to assume. All that remains is for Debtors to pay a  
25 refund of \$101,026.75, now reflected in Proof of Claim No. 78104  
26 that is presumptively allowed and has not been the subject of an  
27 objection.

1       Debtors take a contrary view, reflected as early as when  
2 the court was considering confirmation of the Plan. Debtors  
3 filed their *Schedule of Executory Contracts and Unexpired Leases*  
4 *to be Assumed Pursuant to the Plan and Proposed Cure Amounts*  
5 attached to the Plan Supplement as Exhibit B ("Cure Notice")  
6 (Dkt. 7037).

7       That lengthy schedule included the Agreement. Thus, even  
8 to the present date, Debtors maintain that the Agreement was  
9 subject to assumption because it was not rejected, and the  
10 resolution of the remaining dispute that is the subject of the  
11 present motions is part and parcel of the entire bundle of  
12 rights and obligations of the parties that must be resolved  
13 through arbitration.

14       Given the very specific attention given to matters that  
15 plainly include the present dispute, the court is satisfied that  
16 the Plan and the OCP reserving jurisdiction in this court to  
17 resolve them prevail over those relied on by Debtors to require  
18 the court to order arbitration.

19       In *In re Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir.  
20 2012), the court established the principles that guide  
21 bankruptcy courts in dealing with arbitration provisions versus  
22 bankruptcy alternatives. Those principles convince this court  
23 to exercise its discretion not to order arbitration at present.

24       *Thorpe* involved a very complex reorganization of an  
25 asbestos mass torts case and the implementation of 11 U.S.C. §  
26 524(g). It was a dispute of massive proportions and was  
27 obviously quite critical to the outcome of the bankruptcy as a  
28 whole.

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1       In contrast, Debtors would not have been in bankruptcy at  
2 all but for the tragic wildfires of 2015, 2017 and 2018, none of  
3 which have anything to do with the present dispute. It is easy  
4 to assume that had those fires not occurred, no bankruptcy court  
5 would have been called upon to deal with the present dispute  
6 with DWR.

7       The determination of whether the Agreement is an executory  
8 contract that may be assumed, and if so under what circumstances  
9 and leading to what consequences, is clearly a core matter for  
10 determination unless the arbitration option is more appropriate.  
11 The core question is not a dispositive factor, but one that  
12 should be considered. *Thorpe* taught that "[i]n core proceedings,  
13 by contrast, the bankruptcy court at least when it sees a  
14 conflict with bankruptcy law, has discretion to deny enforcement  
15 of an arbitration agreement." *Thorpe* 671 F.3d at 1021 (citations  
16 omitted).

17       The Ninth Circuit agreed with other circuit courts that  
18 permit bankruptcy court discretion to decline enforcement or  
19 otherwise applicable arbitration provisions "only if arbitration  
20 would conflict the underlying purposes of the Bankruptcy Code."  
21 *Id.* (citations omitted). Had either party initiated arbitration  
22 after DWR gave its notice of termination in 2018 but before the  
23 bankruptcy, there is no doubt that such course would have to be  
24 followed. Even if either party had sought to do so after  
25 bankruptcy, but before consideration of the Plan, the same  
26 result appears likely.

27       Regardless of what could have happened, Debtors chose to  
28 reserve the disposition of this dispute as a post-Confirmation

1 matter as indicated above. While this court is not unmindful of  
2 the tremendous complexity of the reorganization effort, and even  
3 the complexities encountered apart from the wildfire problems,  
4 Debtors still made an election of how best to proceed. They  
5 could have excluded the Agreement from the list of matters to be  
6 disposed of later but did not. Thus, the deferral of resolving  
7 the issue through the plan mechanisms was a conscious choice.

8 *Thorpe* stated:

9 "Arbitration of a creditor's claim against a debtor, even  
10 if conducted expeditiously, prevents the coordinated  
11 resolution of debtor-creditor rights and can delay the  
confirmation of a plan of reorganization."

12 *Id.* at 1023.

13 There was no delay in consideration of the Plan and its  
14 subsequent confirmation and implementation. The court cannot  
15 ignore that conscious choice of the Debtors to proceed under the  
16 procedures and reservations they established and which DWR and  
17 other governmental agencies responded by their reservation of  
18 rights as noted.

19 Even though this issue is presented to the court nearly two  
20 years after the Plan was confirmed, there is still a risk that  
21 an outcome achieved via arbitration, at least on the issues of  
22 whether the Agreement was to the reserved assumption provisions  
23 of the Plan at all, and whether DWR could be required to pay  
24 anything after it gave its notice of termination, would conflict  
25 with those policies articulated by *Thorpe* and memorialized in  
the Plan and the OCP.

27 Under the circumstances presented, and consistent with the  
28 admonitions of *Thorpe*, the court prefers to exercise its

1 discretion and keep that dispute here. If the outcome is as DWR  
2 hopes, the matter is over, subject only to the possibility of  
3 appellate review. If the outcome favors Debtors, the question  
4 of liquidation of the amount of damages to be paid by DWR may be  
5 more appropriately determined through arbitration.

6 There are no material facts in dispute regarding whether  
7 DWR should or should not be ordered to pay its share of the net  
8 loss upon termination of the Agreement. DWR looks to Section  
9 14.5 of the Agreement to insulate it from such a charge because  
10 the other parties continued to operate under it. Debtors rely  
11 on Section 14.7 to hold DWR responsible for its share for  
12 termination in the future.

13 Collateral to that, and of relatively minor importance, is  
14 whether Claim No. 78104 should be paid. So far Debtors have not  
15 asserted any substantive objection to it, but maintain that if  
16 they prevail on the termination issue that would represent  
17 little more than a minor offset in DWR's favor.

18 It is now time to put this dispute to rest. Debtors have  
19 until March 25, 2022, to file a memorandum, not to exceed twenty  
20 pages and limited to this discrete issue described above, in  
21 support of their position. DWR has until April 8, 2022, to file  
22 a reply memorandum, not to exceed twenty pages and similarly  
23 limited. After that the matter will stand submitted unless the  
24 court decides to consider oral argument.

25 If the decision is that DWR prevails, then that should be  
26 the end of it, subject only to Debtors paying Claim No. 78104.  
27 If Debtors prevail on that discrete issue, the court will  
28 revisit the question of the amount DWR's future liability upon

1 termination should be determined through arbitration or via a  
2 damages trial in this court.

3 The court is concurrently issuing orders consistent with  
4 this Memorandum Decision.

5 **\*\*END OF MEMORANDUM DECISION\*\***

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**EXHIBIT C**

**(Order Granting CDWR Motion Dated March 8, 2022)**



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Signed and Filed: March 8, 2022

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case  
PG&E CORPORATION, ) No. 19-30088-DM  
 )  
- and - ) Chapter 11  
 )  
 ) Jointly Administered  
PACIFIC GAS AND ELECTRIC COMPANY, )  
 )  
Reorganized Debtors. )  
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 )  
□ Affects PG&E Corporation )  
□ Affects Pacific Gas and )  
Electric Company )  
☒ Affects both Debtors )  
\* All papers shall be filed in )  
the Lead Case, No. 19-30088 (DM). )  
 )  
 )  
 )

ORDER GRANTING CALIFORNIA DEPARTMENT OF WATER RESOURCES' MOTION  
FOR ORDER DETERMINING THAT THE CASTLE ROCK AGREEMENT WITH PG&E  
CANNOT BE ASSUMED AND CLAIM NO. 78104 BE PAID

For the reasons stated in the Memorandum Decision Regarding  
Dispute Between Debtors and The California Department of Water  
Resources being issued concurrently, California Department of  
Water Resources' Motion for Order Determining that The Castle

1      Rock Agreement with PG&E Cannot be Assumed and that The  
2      Department of Water Resources' Claim No. 78104 be Paid (Dkt.  
3      11887) is GRANTED.

\*\*END OF ORDER\*\*

-2-

**EXHIBIT D**

**(Order Denying PG&E Motion Dated March 8, 2022)**



Signed and Filed: March 8, 2022

Lewis Montali

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**DENNIS MONTALI**  
**U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

ORDER DENYING DEBTORS' MOTION FOR ENTRY OF AN ORDER MODIFYING  
PLAN INJUNCTION AND COMPELLING ARBITRATION OF CLAIM OF  
CALIFORNIA DEPARTMENT OF WATER RESOURCES

For the reasons stated in the Memorandum Decision Regarding Dispute Between Debtors and The California Department of Water Resources being issued concurrently, the *Motion of the Reorganized Debtors for Entry of an Order Modifying Plan*

- 1 -

1 *Injunction and Compelling Arbitration of Claim of California*  
2 *Department of Water Resources* (Dkt. 11896) is DENIED.

3 **\*\*END OF ORDER\*\***

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**EXHIBIT E**

**(Order Denying Motion to Intervene Entered March 22, 2022)**



Signed and Filed: March 21, 2022

Lewis Montali

**DENNIS MONTALI**  
**U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

ORDER DENYING MOTION TO INTERVENE BY CITY OF SANTA CLARA, DBA  
SILICON VALLEY POWER AND NORTHERN CALIFORNIA POWER AGENCY

On March 15, 2022, interested parties City of Santa Clara, dba Silicon Valley Power ("SVP") and Northern California Power Agency ("NCPA") filed a *Notice of Appearance and Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water*

- 1 -

1       Resources' Motion for Order Determining that the Castle Rock  
2       Agreement Cannot Be Assumed and that the Department of Water  
3       Resources Claim No. 78014 be Paid (the "Intervention Motion")  
4       (Dkt. 12024). On March 17, 2022 the California Department of  
5       Water Resources' ("DWR") filed an Opposition to the Intervention  
6       Motion (Dkt. 12035).

7       The Intervention Motion seeks to enter the fray of a  
8       longstanding and nearly adjudicated dispute by filing a brief  
9       according to the schedule set by the court's *Memorandum Decision*  
10      *Regarding Dispute Between Debtors and the California Department*  
11      *of Water Resources* (Dkt. 11999) (the "Memo"). The Memo detailed  
12      the court's decision to grant DWR's *Motion for Order Determining*  
13      *that the Castle Rock Agreement with PG&E Cannot be Assumed and*  
14      *Claim No. 78104 be Paid* ("DWR Motion") (Dkt. 11887) and  
15      subsequently set a further briefing schedule for DWR and  
16      Debtors. SVP and NCPA were both served notice of the DWR Motion  
17      when it was first filed on February 1, 2022. The Intervention  
18      Motion makes clear that SVP and NCPA conferred with Debtors and  
19      deliberately chose not to respond to the substance of the DWR  
20      Motion in the belief that Debtors would prevail in their *Motion*  
21      *of the Reorganized Debtors for Entry of an Order Modifying Plan*  
22      *Injunction and Compelling Arbitration of Claim of California*  
23      *Department of Water Resources* (Dkt. 11896), which the court  
24      denied.

25       In the related dispute between Debtors and DWR, DWR  
26      acknowledged the existence of an agreement among it, SVP and  
27      NCPA (but not Debtors) known as the Layoff Agreement.  
28      Responding to the *Reorganized Debtors' Motion for Order*

1 *Modifying Plan Injunction and Compelling Arbitration* (Dkt.  
2 11896), DWR stated:

3  
4 Whether DWR effectively terminated its interest in  
5 the Castle Rock Agreement is a separate issue that  
6 can be determined without reference to the Layoff  
7 Agreement. To the extent that NCPA and SVP believe  
8 they may have any cognizable action against DWR,  
9 they should pursue it in state court rather than  
attempt to manipulate the bankruptcy court  
proceeding to seek relief through the Executory  
Contract and Cure Dispute and claims allowance  
process. (Dkt. 11942 at 14).

10  
11 In determining whether a motion to intervene is timely,  
12 courts consider three factors: "(1) the stage of the  
13 proceedings; (2) whether the parties would be prejudiced; and  
14 (3) the reason for any delay in moving to intervene." *Nw. Forest*  
15 *Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996), as  
16 amended on denial of reh'g (May 30, 1996). As noted above, SVP  
17 and NCPA chose not to participate in the DWR Motion for the past  
18 month and a half while DWR made clear its interest in  
19 determining the merits of the DWR Motion as to the Debtors from  
20 the beginning. They remained on the sideline, casting their  
21 fate with the Reorganized Debtors. To allow them to have a  
22 second chance now would not be fair to DWR.

23 The proceedings are nearly over, DWR would be prejudiced in  
24 having previously defaulted parties enter the fray, and the  
25 reason for the delay is entirely the choice of SVP and NCPA.  
26 All three factors weigh in favor of denying the Intervention  
27 Motion. Even without intervention, DWR, SVP, and NCPA will  
28

1 still be able to determine remaining rights under the Layoff  
2 Agreement in another forum.

3 Accordingly, the Intervention Motion is DENIED.

\*\*END OF ORDER\*\*

COURT SERVICE LIST

## ECF Recipients

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